

February 1, 2007 DRAFT
Proposed Regional System Water Availability Rule

Add to “Section 1.8 Definitions” in the Basis of Review for Water Use Permit Applications within the South Florida Water Management District:

X. Lower East Coast Everglades Waterbodies, as used in Section 3.2.1.E., is defined as the surface and ground water from Water Conservation Area 1, 2A, 2B, 3A and 3B , the Holeyland/Rotenberger wildlife management areas, and the freshwater portions of Everglades National Park, as depicted in Figure 3-1.

X. North Palm Beach County /Loxahatchee River Watershed Waterbodies, as used in Section 3.2.1.E., is defined as the surface and ground water from the Grassy Waters Preserve, Water Catchment Area, Pal-Mar and J.W. Corbett Wildlife Management Area, Loxahatchee Slough, Loxahatchee River, Riverbend Park, Dupuis Reserve, Jonathan Dickenson State Park, Kitching Creek, Moonshine Creek, Cypress Creek, and Hobe Grove Ditch, as depicted in Figure 3-2.

X. Certification or Certify – means the formal determination by the District, through a validation process consistent with state and federal law, of the total amount of water made available for consumptive use by a water resource development project or project phase.

Insert Subsection E. into Section 3.2.1 Restricted Allocation Area of the Basis of Review for Water Use Permit Applications within the South Florida Water Management District:

E. In addition to all other applicable consumptive use statutory and rule provisions, the following restrictions shall apply when allocating water by permit for water use withdrawals within the Northern Palm Beach County Service Area and Lower East Coast Service Areas 1, 2 or 3.

This section is a component of recovery strategies for minimum flows and levels for the Everglades and the Northwest Fork of the Loxahatchee River, as set forth in Chapter 40E-8, F.A.C., and assists in implementing the objective of the District to ensure that water necessary for Everglades restoration is not allocated for consumptive use upon permit renewal or modification under this rule .

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- (1) The additional restrictions in this section shall only apply to applications for new or modified permits or for permit renewals.
- (2) Except as provided in this section, an applicant must demonstrate, pursuant to the impact evaluation provisions in Section 1.7.5.2., the requested allocation will not cause a net increase in the volume or cause a change in timing on a seasonal ~~monthly~~ basis of surface and ground water withdrawn from the Lower East Coast Everglades Waterbodies or the North Palm Beach County/Loxahatchee River Watershed Waterbodies (which are hereinafter referred to as the "Waterbodies") over that resulting from the base condition water use.

The evaluation of water withdrawn from Waterbodies under this section shall address the impacts of the proposed use on surface and ground water from: (a) integrated conveyance systems that are hydraulically connected to the subject Waterbodies and are tributary to or receive water from such Waterbodies ; and (b) the Waterbodies. Integrated conveyance systems that are hydraulically connected to the subject Waterbodies include primary canals used for water supply including, but not limited to, the Central and Southern Florida Project Canals, and secondary and tertiary canals that derive water from primary canals.

- (3) The "base condition water use" shall be as provided below, but in no case shall exceed the withdrawal permitted to the applicant as of April 1, 2006:

(a) for the public water supply use class, the maximum quantity of water withdrawn by the applicant from the permitted source during any consecutive twelve month period during the five years preceding April 1, 2006. If a permit allocation existing as of April 1, 2006 contains an allocation based on a conversion of a water treatment system, the base condition water use shall be increased to account for the additional volume used assuming the modified treatment system was operational as of April 1, 2006;

(b) for the irrigation use class, the quantity of water calculated using Section 2.3.2 to meet demands for the following: 1. the number of acres actively irrigated by the applicant over the duration of the irrigation permit existing as of April 1, 2006; or 2. if the irrigation project, or a portion thereof, has not yet been constructed pursuant to a required surface water management construction permit or environmental resource permit as of April 1, 2006, the number of acres authorized to be irrigated by such project when constructed, consistent with a water use permit existing as of April 1, 2006;

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(c) for the diversion and impoundment use class, the demands of the applicant calculated pursuant to Section 2.7.2 for the physical conditions of the diversion and impoundment systems as of April 1, 2006; or

(d) for other use classes, the quantity of water withdrawn by the applicant during the twelve months preceding April 1, 2006.

In determining the base condition water use, pursuant to subsections (a) through (d) above, the district shall consider and allow adjustments if the applicant demonstrates that such use is not representative of normal operations due to unanticipated conditions affecting the actual quantity of water withdrawn, such as extreme climatic conditions or equipment failure. Only uses conducted consistent with the existing consumptive use permit limiting conditions shall be considered in identifying the base condition water use. The base condition water use shall not exceed that permitted as of April 1, 2006.

The base condition water use shall include water made available through implementation of offsets, alternative water supplies, or terminated or reduced base condition water uses, specifically required by permit limiting condition to prevent increased water from being withdrawn from the subject Waterbodies. Under these circumstances, the applicant shall demonstrate that such actions were implemented and function as required by the permit.

(4) Applicants shall conduct a preliminary evaluation to determine whether the proposed use has the potential for increasing the withdrawal of water from the Waterbodies over the applicant's base condition water use. Such preliminary evaluations may include a basic analytic impact assessment described in Section 1.7.5.2.A. or other acceptable evaluation pursuant to Section 1.7.5.

If based on a preliminary evaluation the proposed use has the potential for increasing the withdrawal of water from the Waterbodies, the following two evaluations will be compared to identify any changes in location, timing and volume of the withdrawals from the Waterbodies:

(a) A quantification of the withdrawal of surface and ground water from the Waterbodies under the base condition water use; and

(b) A quantification of the withdrawal of surface and ground water from the Waterbodies under the requested allocation.

In conducting this evaluation, the applicant shall consider the timing of the withdrawals as they affect the Waterbodies, i.e., the public water supply use class requires water throughout the year based on seasonal demand trends of the service area, versus the agriculture use class which uses water based on growing cycles of the particular crop.

When evaluating the affects of the proposed use on the Waterbodies, the applicant shall evaluate the resource efficiency of the use, i.e., the public water supply class demands are based on the demands of the service area and the type of treatment, and generally do not provide return flow to the source at the location of the withdrawal; whereas, the agricultural use class demands are based on the crop type, irrigation method and soil conditions, and typically provide some component of recharge at or near the point of withdrawal. The location component is evaluated based on the distance of the withdrawal from and the specific individual area of the subject Waterbodies as depicted in as depicted in Figures 3-1 and 3-2, e.g., Water Conservation Area 1, 2A, or 2B, or the Northwest Fork of the Loxahatchee River or Loxahatchee Slough.

(5) If the comparison of the evaluations identified in Paragraph (4) identifies an increase in the volume or change in timing of water requested to be withdrawn from the Waterbodies, the applicant shall do one or more of the following:

(a) Certified project water. Identify that additional water from the Waterbodies has been made available through implementation of a project for water resource development, as defined in Section 373.019(22), Florida Statutes, and such water has been certified as available by the Governing Board, as defined in Section 1.8.

(b) Offsets. Propose, identify a schedule for implementation, and construct and operate adequate offsets to eliminate the projected increase in volume or change in timing of withdrawals from the Waterbodies over the base condition water use. An offset will be approved if it prevents an increase in volume or change in timing of surface and groundwater withdrawn from the Waterbodies over the base condition water use. Offsets include the use of recharge systems and seepage barriers that meet the above requirement;

(c) Alternative water supply. Propose, identify a schedule for implementation, and construct and operate alternative water supplies, as

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defined in Section 373.019(1), Florida Statutes. An alternative water supply will be approved under this rule if it is adequate to meet the reasonable increased demands without causing an increased volume or change in timing of the withdrawal from the Waterbodies over the base condition water use;

(d) Terminated or reduced base condition water use. Identify terminated or reduced base condition water uses as stated below. The request will be approved if the applicant demonstrates that the requested allocation does not cause an increase in volume or change in timing of withdrawals from the Waterbodies over the applicant's base condition water use due to the reduction or elimination of other base condition water uses that existed on April 1, 2006. The applicant must demonstrate that water is available through providing documentation of the modification or termination of the historic consumptive use permit prior to issuance of the proposed permit under this rule; or,

(e) Available wet season water. Identify water is available during the wet season as set forth below. The wet season water will be approved if the applicant demonstrates that water is available under the conditions described below during the wet season, provided the applicant demonstrates that such water is not required to achieve the restoration benefits to the Waterbodies pursuant to the Comprehensive Everglades Restoration Plan, North Palm Beach County Comprehensive Water Management Plan, and the Acceler8 program. Water available under these conditions shall be limited to the wet season discharges that are projected to persist following implementation of the entire Comprehensive Everglades Restoration Plan, North Palm Beach County Comprehensive Water Management Plan, and the Acceler8 program.

1. Available surface water discharges during the wet season shall be identified based on best available information at the time of permit application evaluation used to quantify surface water flows from or to the restored Waterbodies, as reflected in the Comprehensive Everglades Restoration Plan, North Palm Beach County Comprehensive Water Management Plan, and the Acceler8 program, in their entirety;

2. Available wet season surface water discharges will be identified based on 1 in 10 drought conditions during May 1st through November 1st, as determined by annual rainfall statistics measured from gauges that are proximal to the applicant's point of withdrawal defined in Part B

Water Use Management System Design and Evaluation Aids, Part IV
Supplemental Crop Requirement and Withdrawal Calculation; and,

3. Wet season surface water requested by the applicant must be derived within the same hydrologic area where the available surface water is identified.

Offsets, alternative water sources and terminated or reduced base condition water uses implemented after April 1, 2006 shall be considered in addressing requested increases in withdrawals from Waterbodies under this section. Notwithstanding, as stated in Paragraph 3, water made available from the permitted source through offsets, alternative water supplies and terminated or reduced base condition water uses implemented consistent with permit limiting conditions to prevent increased water from being withdrawn from the subject Waterbodies, shall be considered in the base condition water use.

(6) Consistent with subsection (5), the permit applicant may obtain an allocation for additional water from the Waterbodies over the applicant's base condition water use, as identified below:

(a) Certified project water. Water certified by the Governing Board as available for consumptive use through operation of a water resource development project, as provided in Section (5)(a);

(b) Temporary allocation. Water temporarily required to meet the applicant's reasonable demands while implementing an alternative water supply pursuant to subsection (5)(c) or while implementing an offset identified pursuant to subsection (5)(b). The permit will be conditioned with dates and milestones for development of the alternative water supply or offset. A temporary allocation shall be reduced to be consistent with this section when the alternative source is projected to be available, consistent with permit limiting conditions. The temporary allocation shall be adjusted, as necessary, to reflect the offset on the Waterbodies when the offset is projected to be available, consistent with the permit limiting conditions.

The limiting conditions governing the quantity and time period for the temporary allocation shall be based on expected due diligence of the permit applicant, as determined by applying the factors in subparagraphs 1. through 3., below, to implement the alternative water supply or offset in an expeditious manner, not to exceed five years unless specifically approved by

the Governing Board. The time period shall be determined considering the following factors:

1. The projected time period for design, receipt of necessary authorizations, and construction of the alternative supply or offset;
2. The timing of demands to be met from the alternative supply or offset;
3. Other factors that indicate the reasonable period required to develop the alternative supply or offset.

(c) Water made available through implementation of offsets or the termination or reduction of base condition water use withdrawals. Water made available through implementation of offsets pursuant to subsection (5)(b) or water made available through the termination or reduction of other users' base condition water use withdrawals pursuant to subsection (5)(d), consistent with permit limiting conditions; or,

(d) ~~AAvailable non-drought conditions~~ ~~wet season~~ water. Pursuant to permit limiting conditions, wWater available -during non-drought conditions. -the wet season, provided the applicant demonstrates that such water is -not required to achieve the restoration benefits to the Waterbodies pursuant to the Comprehensive Everglades Restoration Plan, North Palm Beach County Comprehensive Water Management Plan, and the Acceler8 program, pursuant to subsection 5(e). Pursuant to permit limiting conditions, additional surface water withdrawals will be permitted only when flood control regulatory releases are being made, and not when water supply deliveries are being made, from the Waterbodies.

1. Non-drought conditions shall mean conditions when rainfall is greater than in a 1 in 10 drought condition.

2- Availability of non-drought conditions water withdrawals shall be identified based on best available information at the time of permit application evaluation. Water available under these conditions shall be limited to water availability that is projected to persist following implementation of the entire Comprehensive Everglades Restoration Plan, North Palm Beach County Comprehensive Water Management Plan, and the Acceler8 program.;

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3. Limiting conditions shall require monitoring of water levels in Waterbodies that are proximal to the applicant's point of withdrawal, and defined 1 in 10 drought condition triggers when water withdrawals will not be permitted.

4. Limiting conditions shall provide that the increase in allocation for traditional sources of water for that non-drought events may be utilized until such time as water withdrawals will not be permitted under 3 above, during which time the non-drought condition available water shall be discontinued and the use of alternative water supplies will be required until the drought conditions have ended.

(7) Permit applicants must meet the requirements of any established minimum flow and level and water reservation, if applicable.